

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SONNIE JOHNSON
Claimant

VS.

ACME FOUNDRY, INC.
Respondent,
Self-Insured

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Docket No. 253,871

ORDER

Claimant appealed the November 26, 2001 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on May 10, 2002, in Wichita, Kansas.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared for claimant. Paul M. Kritz of Coffeyville, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a December 27, 1999 accident and injuries to the back and both legs. The accident occurred when claimant dropped a butterfly valve, injuring his back. In the November 26, 2001 Award, Judge Frobish determined claimant's injuries were only temporary in nature and, therefore, the Judge limited claimant's award to temporary total disability benefits and medical benefits.

Claimant contends Judge Frobish erred. Claimant argues his back condition is much worse than before the December 1999 accident and that he has proven a 100 percent wage loss and a 78 percent task loss. Accordingly, claimant requests the Board to award him an 89 percent work disability (a disability greater than the functional impairment rating).

Conversely, respondent contends claimant only temporarily aggravated a preexisting back condition and, therefore, claimant has sustained no permanent impairment attributable to the December 1999 accident. Accordingly, it requests the Board to affirm the November 26, 2001 Award.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability from the December 27, 1999 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed. The Board concludes claimant has failed to prove that he sustained additional permanent injury or permanent impairment as a result of the December 27, 1999 accident. Accordingly, the Judge properly limited claimant's award to temporary total disability benefits and medical benefits.

Claimant worked for respondent approximately 11 or 12 years. In early 1990, claimant injured his back while working for respondent. Claimant received medical treatment for that back injury and work restrictions, ultimately returning to work for respondent in the supply room performing light duty activities. Claimant continued to perform that work until early January 2000, when he sought treatment for the December 27, 1999 accident from Dr. Paul S. Sandhu.

Claimant contends that he sustained additional permanent injury in the December 1999 accident. But the medical evidence does not support that contention.

First, Dr. John R. Smithson, Jr., the board-certified neurological surgeon who treated claimant for his 1990 back injury and who saw claimant again following the December 1999 accident, testified that claimant's symptoms in March 2000 were better than when he saw claimant in 1990. The doctor saw claimant several times in early 1990 for chronic low back pain. A CT scan done in 1990 suggested degenerative osteoarthritic changes in the lower lumbar spine, which was consistent with x-rays taken after the 1999 accident. In March 1990, the doctor restricted claimant to light duty work with no lifting greater than 25 pounds and no repetitive bending at the waist. When asked if claimant had sustained any additional permanent impairment due to the 1999 accident, the doctor testified that he was unable to say as he was unaware how claimant fared between the two accidents. Dr. Smithson noted that claimant's present functional impairment was less than what it was in March 1990. The doctor also testified that he would not change the medical restrictions that he gave claimant in 1990.

Second, Dr. Sandhu, the physician who is respondent's company doctor and who treated claimant following the December 1999 accident, last saw claimant on February 15, 2000. Accordingly, the doctor has no opinion what claimant's permanent work restrictions

would be. Although Dr. Sandhu gave claimant restrictions while treating claimant, including restrictions against lifting and limiting claimant to sitting for two to three weeks, those restrictions were only temporary. The doctor believed claimant had sustained a muscle sprain in the low back or bursitis in the right hip, both of which the doctor expected to resolve.

Next, Dr. Philip R. Mills, who examined claimant at the request of respondent's attorney, saw claimant in August 2000 and diagnosed degenerative lumbosacral arthritis and mechanical low back pain. Dr. Mills testified that he was unable to relate, within a reasonable degree of medical probability, claimant's present symptoms with the December 1999 accident. The doctor testified, in part:

Q. (Mr. Kritz) Were you able within a reasonable degree of medical probability to state that there was a causal relationship between the examinee's [claimant's] current complaints and the reported injury of December 27, 1999?

A. (Dr. Mills) No. That would appear to have been a temporary aggravation or part of the natural course of his underlying back problem present through the years.¹

Dr. Mills determined that claimant now had a five percent whole body functional impairment rating according to the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides), but that claimant would have had a 10 percent rating as early as approximately 1987 or 1989 due to the radicular symptoms that he was having at that time. Therefore, claimant's functional impairment rating has actually decreased. Further, the doctor does not believe that the December 1999 accident would have increased claimant's permanent work restrictions.

Finally, claimant's medical expert witness, Dr. Pedro A. Murati, saw claimant in May 2000 and diagnosed lumbosacral strain and bilateral polyradiculopathy. The doctor testified that claimant now has a 20 percent whole body functional impairment rating utilizing the AMA Guides. But Dr. Murati did not know what portion of that 20 percent functional impairment was attributable to claimant's preexisting low back condition. The doctor testified, in part:

Q. (Mr. Kritz) . . . Was any percentage of the impairment rating that you found due to a pre-existing condition?

A. (Dr. Murati) I don't know. I don't have any records to clarify that question appropriately.

Q. It would be necessary for you to review previous medical records so that you could determine the extent of the new injury?

¹ Deposition of Dr. Philip R. Mills, January 24, 2001; p. 17.

A. Probably, yes.²

Consequently, Dr. Murati did not know what portion, if any, of claimant's functional impairment was caused by the December 1999 accident.

When considering the opinions from the various medical experts, the Board is not persuaded claimant sustained permanent injury or permanent impairment as a result of the December 1999 accident. Accordingly, the Judge properly denied claimant's request for permanent partial general disability benefits.

AWARD

WHEREFORE, the Board affirms the November 26, 2001 Award entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Paul M. Kritz, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

² Deposition of Dr. Pedro A. Murati, December 1, 2000; p. 18.